IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.MC.No. 3570 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.3318/2006 Dated 25/09/2006
CRA.94/2005 of SESSIONS COURT, PALAKKAD

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PETITIONER:

N.K. DAMODHARAN,
GROUP-D,
KENDIRYA VIDYALAYA,
KALPETTA,
WAYANADU.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENTS:

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1. RAMACHANDRAN NAIR.
'SREENILAYAM',
UMMINI,
DHONI POST,
PALAKKAD.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/11/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3570 of 2007

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Dated this the 28th day of November, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The verdict of guilty, conviction and sentence have now become final. The petitioner faces the sentence of imprisonment till rising of court. There is a further direction to pay an amount of Rs.37,000/- as compensation and in default to undergo S.I. for a period of 45 days. The petitioner was directed to appear before the learned Magistrate on 30.11.2007 to serve the modified sentence. The petitioner did not appear on that day. Long later he has been taken into custody in execution of the warrant of arrest issued by the learned Magistrate and he is undergoing the default sentence, submits the learned counsel. At this stage, the parties have settled the disputes. They have filed an application for composition. It is prayed that the composition may be accepted and the sentence imposed on the accused may be set

aside. There is a further prayer that at any rate the amounts having already paid, the petitioner may be directed to be released forthwith.

2. The prayer obviously is to invoke the dictum in **Sabu George** v. **Home Secretary** (2007 (1) KLT 982). That decision is no authority for the proposition that any and every post-revision composition can or ought to be accepted. The petitioner in this case was sentenced to undergo imprisonment till rising of Court and to pay compensation. Of course, default sentence has also been imposed.

3. In the facts and circumstances of this case, I find no reason to invoke the extra ordinary inherent jurisdiction under section 482 Cr.P.C. and to accept the post-revision composition and set aside the sentence. The petitioner has already undergone the substantive sentence of imprisonment till rising of court, it is submitted. The complainant, who has entered appearance through his counsel, now asserts before court that the complainant has received the entire compensation amount from the accused. The respondent is represented by counsel. A joint statement has been filed. I do, in these

circumstances, accept the said statement of the learned counsel for the petitioner and the respondent.

4. Compensation amount having already paid and discharged, the petitioner is not bound to undergo any default sentence. In as much as it is submitted that the petitioner is undergoing imprisonment in default now, I am satisfied that there can be a direction to the learned Magistrate to forthwith release the petitioner from custody. The compensation amount having already been paid, though belatedly, there can be no question of the default sentence being executed against the petitioner. The position has been made crystal clear in the decision in **Girish** v. **Muthoot Capital Services** (P) Ltd. (2007 (1) KLT 16).

5. In the result, this Crl.M.C. is allowed in part. There shall be a direction to the learned Magistrate to forthwith direct release of the petitioner, he being not liable to undergo any default sentence now, in view of the admitted payment of compensation amount. Normally this court would have only directed the learned Magistrate to consider the submissions and pass appropriate orders, but in as much as it is

submitted that the petitioner is now undergoing the default sentence from 27.11.2007, I am satisfied that orders in favour of the petitioner can be passed by this Court.

6. Hand over copy to day itself.

(R. BASANT)
Judge

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